

RD AN No. 3526(1930-C)  
April 10, 2000

TO: State Directors and Program Managers  
Rural Development

FROM: James C. Kearney (Signed by James C. Kearney)  
Administrator  
Rural Housing Service

SUBJECT: Servicing On-Farm Labor Housing Borrowers

PURPOSE/INTENDED OUTCOME:

A recent review of files of on-farm type Labor Housing (LH) borrowers disclosed that many of these borrowers are charging rent, utilities, security deposits, or cleaning fees to tenants in violation of the borrowers' agreement with the Rural Housing Service (RHS). The purpose of this Administrative Notice (AN) is to ensure that the RHS regulations regarding rent charges for on-farm type labor housing are fully understood and enforced by Rural Development field staff and followed by all borrowers. This AN clarifies RHS policies with respect to rent charges in on-farm type housing and outlines the steps that field office employees should take to ensure that the regulations are not violated.

The guidance set out herein is issued, in part, to comply with a court order. The court order mandated the Federal Government cease its failure to enforce the rollback and rebate or credit provisions set out in paragraph VI of Exhibit C of RD Instruction 1930-C. The court also ordered the Federal Government to cease its failure to enforce the notice and comment provision set out in Exhibit C of RD Instruction 1930-C (see paragraphs IV and V) to tenants for proposed changes to shelter costs (i.e., rent and utilities). The court also recently ordered the Government to enforce the provisions of its Administrative Notices (see Attachment F).

COMPARISON WITH PREVIOUS AN:

This AN reissues the policies set out earlier in RD AN No. 3461(1930-C) dated April 14, 1999. The AN also replaces AN No. 2526 dated (faxed only) March 31, 2000.

IMPLEMENTATION RESPONSIBILITIES:

State Directors should ensure Multi-Family Housing (MFH) servicing officials comply with the provisions set out in this AN.

EXPIRATION DATE: March 31, 2001

FILING INSTRUCTIONS:  
Preceding RD  
Instruction 1930-C

I. Background. Prior to January 17, 1993, owners of on-farm type LH were not allowed to charge rent or utilities to eligible tenants residing in the housing if the requirement that the owner execute a loan agreement had been waived. If there had been no waiver of the loan agreement requirement, owners of on-farm type LH were allowed to charge rent and utilities for the unit, provided charges were approved in accordance with the procedure set out in Exhibit C to RD Instruction 1930-C.

Effective January 17, 1993, regulations required all owners of Section 514 on-farm type LH to sign a loan agreement that is set out as Exhibit K of RD Instruction 1944-D. By signing this agreement, the owners of on-farm LH reaffirmed their obligation not to charge rent or utilities to eligible tenants. Owners who sign the agreement must obtain the Government's prior approval for charging rent, utilities, refundable deposit charges or cleaning fees. Charges must be reasonable and approved in accordance with the procedure set out in Exhibit C to RD Instruction 1930-C. Borrowers not meeting these requirements will be requested to comply with these requirements. Borrowers unwilling or unable to do so may be subject to the RHS initiating appropriate servicing action to seek compliance.

II. Policy. Field office employees are to ensure that owners of on-farm type LH financed under Section 514 are not charging for rent, utilities, refundable damage deposit charges, or cleaning fees to residents, unless the rent, charges and fees are approved by authorized officials in accordance with Exhibit C to RD Instruction 1930-C.

Where violations are evident the owner will be asked, in writing, to come into compliance. In particular, the provisions of paragraphs IV, V, and VI of Exhibit C to RD Instruction 1930-C must be met by borrowers. Tenants must receive proper notification and an opportunity to comment on proposed rent changes. Borrowers should arrange to request rent changes during periods when migrant residents can be readily contacted. Making requests during the off farm season when tenants are not occupying the units does not excuse the borrower from the responsibility to make effective notification to tenants. Tenants must also receive notice of any approved charges authorized by the Agency prior to imposing charges. Borrowers imposing unauthorized charges must be notified, in writing by the Agency, that they must roll back rates retroactively to the last authorized level. The borrower must give tenants a rebate or credit for the unauthorized charges.

Borrowers unable or unwilling to comply with Agency regulations will be serviced in accordance with RD Instruction 1965-B. Borrowers with known violations must be brought into compliance or subjected to servicing actions which may include, but not be limited to, added Agency supervisory visits, inspections, and reviews; acceleration; suspension; debarment; and referral to local, state, or Federal officials for investigation and prosecution of violations of civil or criminal law.

III. Definition of Rent. For the purposes of the AN and for administering the Section 514 on-farm program, the term "rent" means any charge made by a landlord to an eligible tenant household for the use and occupancy of the housing and includes utilities (i.e., electricity, heat, water, waste disposal, etc.), or the requirement that the tenant pay the utilities directly to the utility provider.

The term "rent" is also clarified to include any deductions or off-sets made to a tenant's wages for the use of a LH dwelling. Rent does not include bona-fide wage changes or reductions unrelated to retaining rent free housing benefits.

IV. Supervisory Visits. Each employee making a supervisory visit to a LH borrower should take the following actions:

A. Added supervisory visit questions. Complete the applicable provisions of Exhibits G, G-1, and G-2 of RD Instruction 1930-C. Exhibits G-1 and G-2 should be completed without the borrower present, to the extent that this is practical. When completing Exhibit G, document the following additional borrower responses:

1. Whether the borrower is charging tenants for rent, utilities, security, or cleaning fees.
2. Whether tenants are required to pay utilities directly to the utility companies.
3. Whether any tenants are getting paid less than other farm-workers because the borrower is providing them with free housing.
4. Whether there have been any recent wage reductions and, if so, an explanation of why.
5. What portion of the year is the housing occupied.
6. Whether the housing is licensed, or otherwise legally permitted to be operated for the entire term of occupancy. If there is any doubt, ask the borrower to produce the license for review, or to provide alternative documentation of legal ability to operate the housing, and record the borrower's response. This question need not be asked if existing file material already reflects that the housing is appropriately able to operate for the term of occupancy for residents.
7. Whether the borrower provided copies of all executed statements of Exhibit K-1 of RD Instruction 1944-D for review and inspection by the Agency. The Agency should review this documentation and any similar documentation forwarded with the last annual report.
8. Whether the borrower provided copies of all utility bills for the farm labor housing if it is metered separately, for Agency review and inspection. The Agency should review this documentation along with the documentation submitted with any utility allowance approval request.

B. Added tenant interview questions. In completing tenant interviews using Exhibit G-2 of RD Instruction 1930-C, record the dollar amount of rent paid and utilities paid in the appropriate column. Agency officials should seek to obtain and document the following:

1. A meeting with the tenants residing in the labor housing should be convened, preferably without the borrower being in attendance in order to ensure objectivity. Solicit the information set out in the first four questions listed in paragraph A above. Letters to tenants in advance of the visit may also be used to solicit this information.
2. If the borrower is unable to provide utility bills, contacting the utility company to determine in whose name the utilities are registered. Compare the information solicited by tenant interviews on utilities paid with the utility company data where possible.
3. A review of the borrower's farm and home plan and other financial records to determine whether the borrower is deriving any income from the farm labor housing units. Compare the information solicited by tenant interviews on rent and utility payments with that disclosed by the borrower.

## V. Servicing Actions.

A. Normal servicing letter and initial follow-up. If the borrower is not complying with Agency regulations (including improperly charging rent, permitting unlicensed occupancy or occupancy during a period for which the housing was not designed) the borrower should be sent a letter identifying the compliance deficiencies. A letter similar to that appearing in Attachment A may be used. The letter should normally be sent within 15 days of identification of the compliance deficiencies. Borrowers should normally be requested to issue a response within 15 days of the date of such a letter. When rent change violations are identified, the extent of the violations should be documented, including an estimate of the amount of the improper charges involved and the documentation relied upon to derive these estimates. Borrowers in violation should be requested to show evidence of any reimbursement or crediting of improper charges to those residents affected. This includes documentation of attempts to contact and reimburse former tenants for unauthorized charges. Where documentation shows former tenants cannot be reached for reimbursement of unauthorized charges, the borrower may remit the unauthorized charges to the Government for processing as a miscellaneous payment for crediting to the Rural Housing Insurance Fund. A copy of Exhibit C to RD Instruction 1930-C may be sent with any letter notifying borrowers of a violation of these regulations.

Within 30 days of sending any letter to the borrower citing unapproved rent charges, officials should verify whether the borrower has stopped unapproved charging for the use and occupancy of the housing, and if the borrower has refunded tenants any improper charges previously collected. This may be accomplished by a follow-up visit, written communication to tenants, or other effective means. During any follow-up visit, RHS staff should attempt to meet with the tenants to determine if a borrower's improper practice of charging for the use of the housing has ceased. The meeting between RHS staff and the tenants should not be in the presence of the borrower.

B. Workout plan to achieve compliance. When a workout plan is being considered to bring a borrower into compliance with Agency regulations, the provisions of Exhibit B to RD Instruction 1965-B should be followed. Borrowers that are not in compliance with Exhibit C of RD Instruction 1930-C may be eligible for a supplementary payment agreement calling for less than a full loan installment for use in refunding improper charges to residents or former residents. Upon the end of such workout arrangements, including deferred or reduced debt service payments, reamortization of the account should be considered.

Upon compliance with the rent change provisions set out in Exhibit C to RD Instruction 1930-C and approval by Agency servicing officials, the borrower may consider waiving the authorized collections and credit residents for payment of the approved charges until such time as the improperly assessed charges are fully offset. Such arrangements should normally not exceed 2 years. Borrowers may not reduce resident wages to finance any reductions in shelter cost charges.

In determining the reasonableness of any utility charge, the borrower should be required to submit to RHS an energy audit that complies with Exhibit D of RD Instruction 1930-C and Exhibit A-6 of RD Instruction 1944-E. Energy efficient modifications to the housing should be required if the modifications are cost-effective as defined in Exhibit C to RD Instruction 1930-C. Moreover, when reviewing energy audits and proposed rents, RHS should evaluate whether the housing is suitable for year-round occupancy.

If the housing is not suitable for year-round occupancy, a rent charge approved by RHS may only be assessed for the period of occupancy for which the housing is suitable. The housing may not be occupied and no rent may be charged for the period for which the housing is not suitable for occupancy. If the borrower wishes to make the housing suitable for year-round occupancy, RHS may approve any rent change request for the entire year only after the borrower makes the necessary modifications and obtains all necessary permits and licenses to operate the housing on a year-round basis.

C. Secondary request letters. Borrowers failing to respond to letters requesting compliance with Agency regulations, or failing to arrange a meeting to resolve compliance concerns, or failing to arrange to develop an acceptable workout plan, must be notified of the Agency's continued concerns and requested to comply. Letters similar to those set-out in Attachment B or C may be used. Borrowers will be advised that the servicing options set-out in Attachment D are available to resolve compliance concerns.

D. Last notice to avoid more serious servicing actions. Borrowers who continue to be in non-compliance will be requested to comply with Agency regulations and requirements or face the prospects of adverse servicing actions. Letters similar to those set-out in Attachment C may be used. The timeframe for reply to such a letter should normally be 15 days of the date of such letter. Field office servicing officials will forward a problem case report for borrowers in violation of Agency requirements (see Exhibit A to RD Instruction 1955-A) to the State Director along with recommended servicing actions. The time frame for this action should normally be within 30 days of concluding that efforts to achieve compliance to date have been unsuccessful.

E. Processing problem case reports. The State Director should take appropriate action on problem case reports and request any needed guidance or action from other Governmental officials when warranted. This may include seeking to initiate foreclosure, seeking appointment of a receiver, or to initiate other appropriate legal remedies to enforce compliance. This may also include initiating a request for an audit or investigation from the Office of Inspector General (OIG) in accordance with the provisions of RD Instruction 2012-A or 2012-B.

F. Documentation accompanying problem case reports and required action. If the borrower has not complied with the requirements set-out in earlier servicing attempts, a complete report of the initial visit and follow-up action should accompany any problem case report forwarded to the State Director for further action.

If, after sending appropriate notices to the borrower (see attachments A, B, and C), the borrower does not stop charging unauthorized rents and does not provide refunds or credits of any improperly charged rents to tenants, a problem case report is to be prepared and forwarded to the State Director. State Directors, with the assistance of the Office of General Counsel, should take appropriate actions to enforce the owner's agreement not to charge rent and to refund or credit any improperly charged rent. Borrowers committing a serious violation (including violation of the provisions of Exhibit C of RD Instruction 1930-C when a tenant is not reimbursed or credited for improper charges), who are not able or willing to comply, or enter into an acceptable workout plan to achieve compliance, should normally be:

1. Sent a copy of Exhibit H or I to RD Instruction 1955-A (this may incorporate provisions set out in Exhibit B to RD Instruction 1951-N when appropriate). This action initiates acceleration of the account.
2. Considered for a suspension or debarment in accordance with the provisions of RD Instruction 1940-M. Debarment ensures borrowers are no longer able to participate in Government programs for the debarment period.

VI. Compliance concerns warranting attention and corrective action. Among the compliance concerns warranting corrective action are the following:

- A. Shelter cost changes. Shelter cost changes should be processed in accordance with Exhibit C to RD Instruction 1930-C. Violations warrant correction, such as the reimbursement of inappropriate charges to residents through rebates or credits as set out in paragraph VI of Exhibit C to RD Instruction 1930-C. Borrowers must make efforts to contact and rebate unauthorized charges to former residents. Should the borrower be unable to rebate or credit improper shelter cost charges to affected residents because they cannot be located, the improper charges should be forwarded for processing as a miscellaneous payment for crediting to the revolving fund. Borrowers should not receive indirect benefit from such improper actions such as having any improper collections “credited” to the Government for application as a voluntary additional payment on loans owed the Government. Alteration of Exhibit K-1 of RD Instruction 1944-D verification forms to reflect that rents are being charged, does not constitute appropriate evidence of rent change approval. The provisions of Exhibit C to RD Instruction 1930-C should be met to evidence compliance with rent and shelter cost changes.
- B. Tenant notification. Tenant notification of shelter cost changes should be supported by evidence and enforced in accordance with the provisions of Exhibit C to RD Instruction 1930-C. Where such notifications are not supported, a rent change violation is apparent. Corrective action such as reimbursement or credits as set out in paragraph VI of Exhibit C to RD Instruction 1930-C is appropriate.
- C. Utility allowance documentation. Utility allowance changes should contain the information required by Exhibit C of RD Instruction 1930-C and Exhibit A-6 of RD Instruction 1944-E. Corrective action should include gathering the required information prior to any approval actions.
- D. Energy audits. Rent changes cannot be properly approved without ensuring that a current energy audit has been conducted and that cost-effective measures highlighted therein are implemented prior to approval of any shelter cost change requests. Corrective action should include enforcing the energy audit requirements and ensuring that any warranted cost-effective measures are taken prior to any approval actions taking effect. A review of any past approval actions evidencing harmful effect from not enforcing such provisions or for not adhering to committed cost-effective actions warrant corrective actions.
- E. Loan agreement. Failure to execute the loan agreement set out in Exhibit K to RD Instruction 1944-D. Corrective action should include a written demand to execute the agreement. Failure to comply with such request warrants forwarding a problem case report to the State Director. This type of noncompliance may require more aggressive servicing actions including additional supervisory visits. Failure to execute the loan agreement may be a sign that other compliance deficiencies exist. Scheduling a supervisory visit as soon as possible but usually not later than 3 months after the failure is warranted to verify whether other compliance deficiencies exist.

F. Recordkeeping and reports. Borrowers are expected to keep appropriate records and reports. This includes the following:

1. Financial records. When residents are not charged for residing in the housing unit, a farm and home plan or similar document may suffice for the cashflow plan portion of the annual reporting requirements. When residents are charged for residing in the housing unit, adequate financial disclosure is required. This may be accomplished by using a multi-housing cashflow budget. When appropriate, required accompanying information is to be submitted with the cash flow budgets (i.e., energy audit, utility allowance, and documentation required by Exhibit K-1 to RD Instruction 1944-D). Budget reviews should be evaluated to ensure the labor housing is operated in a nonprofit manner (i.e., cash LH expenses for operations, loan installments, taxes, insurance, and upkeep are less than or equal to cash receipts from LH revenue from authorized rents, utilities, security deposits and fees). See Exhibit B-7 of RD Instruction 1930-C and Exhibit K-1 to RD Instruction 1944-D for guidance on annual project reporting requirements.
2. Documents needed to verify eligibility to reside in labor housing dwelling units. Where rent is being charged, a copy of tenant certification Form RD 1944-8 is appropriate. In addition, any documentation required to demonstrate that the provisions of section 1944.153 of RD Instruction 1944-D are met is required. This should document that a substantial portion of income is derived from farm labor or is considered so earned if the housing was initially provided on a non-rental basis as part of employment compensation for farm labor. The provisions of section 1944.154 (d) or (e) of RD Instruction 1944-D should be followed.
3. Documents showing compliance with Exhibit C to RD Instruction 1930-C are needed if tenants are being charged for rent, utilities, refundable security deposits, or cleaning fees. This includes evidence of tenant notification and reporting disclosure requirements, a current energy audit, and current utility allowance documentation if residents are being charged for utilities.
4. Evidence that taxes and insurance are paid.
5. Evidence that the property is decent, safe, sanitary, and free from health and safety hazards.
6. When appropriate, evidence of a management plan and management agreement (See Exhibit B-8 to RD Instruction 1930-C).

VII. LH Compliance Concerns Detected After Promissory Notes are Paid in Full. Compliance concerns uncovered after payment in full may warrant notices to borrowers. Letters similar to those set out in attachments A through C may be used. This is especially appropriate under circumstances where unapproved shelter cost charges are detected. However, when such evidence is over 6 years from the date the borrower's account matured, no notification is required. Where a serious violation is discovered, the Agency may consider taking appropriate actions even though the account matured. The guidance of the OGC may be sought in determining what corrective measures can be brought to bear under such circumstances. Such actions may include referral to the OIG recommending initiation of an audit or investigation and suspension or debarment from participation in Federal programs under the provisions of RD Instruction 1940-M.

VIII. Reporting. Agency personnel must provide quarterly reports in accordance with the provisions set out in Attachment E.

Questions concerning the provisions of this AN may be coordinated with the State Office staff and directed to the Multi-Family Housing Portfolio Management Division at 202-720-1600.

Attachments



ROUTINE NOTICE OF SERVICING RESULTS AND CONCERNS

\_\_\_\_\_  
Date

Dear \_\_\_\_\_:

We are writing to inform you of the results of a recent review of certain selected aspects of your operations. A copy of the results of our review is attached [Attach copy of supervisory visit report, physical inspection report, compliance review, reserve records, notice of payment due, etc.].

Please review the attached material and note the areas of concern listed. [We want to especially bring to your attention the following items:]

[Either the letter or the attachment must identify the problems and, where unauthorized charges are discovered, identify the retroactive rollback and rebate or credit duty set out in paragraph VI of Exhibit C of RD Instruction 1930-C.]

We are asking that you contact this office within 15 days of the date of this letter to inform us of the corrective actions you have taken, or plan to take, to correct the concerns listed.

Our office address and telephone number are: [Insert address and telephone number].

Sincerely,

\_\_\_\_\_  
(Signature and title of Official)

Attachment

[Exhibit C to RD Instruction 1930-C]

NOTIFICATION OF SERIOUS SERVICING CONCERNS

\_\_\_\_\_  
Date

Dear \_\_\_\_\_:

We are writing to inform you that certain aspects of your operations are of serious concern to the Agency.

A brief description of the item of concern which warrant attention is [provided below:] [attached.]

We would like to arrange a meeting to discuss these concerns. [Please contact our office to confirm if you can make the tentatively scheduled meeting at the following time, date, and location:] OR [Please contact our office within 15 days of the date of this letter to make the necessary arrangements]. Our address and telephone number are (insert address and telephone number).

Please be prepared to discuss the matters of concern identified. [In particular, you may want to bring the following information to the meeting:]

We look forward to hearing from you.

Sincerely,

\_\_\_\_\_  
(Signature and title of official)

Attachment

NOTIFICATION OF INTENT TO PURSUE  
MORE FORCEFUL SERVICING ACTIONS

\_\_\_\_\_  
Date

Dear \_\_\_\_\_:

We regret that earlier attempts to resolve [state the problem] have not been successful.

We are writing to inform you that the Government intends to take further action unless alternative arrangements are promptly made with this office. If you have not contacted us within 15 days, we intend to pursue the [following actions:] [attached actions.]

[List actions, e.g., Forward a problem case report to the State Director, recommend an investigation by the Office of Inspector General, demand a change in project management, place a recoverable cost charge on the account, forward a recommendation to the State Director to issue a Notice of Acceleration, etc.]

We are hopeful we can avoid the necessity of taking the steps outlined above. Unfortunately, we will be forced to do so unless we hear from you within 15 days from the date of this letter. Please contact our office immediately if you wish to avoid the actions described above.

Sincerely,

\_\_\_\_\_  
(Signature and title of official)

Attachment

LIST OF SERVICING OPTIONS AVAILABLE UNDER RHS INSTRUCTIONS  
FOR USE IN BORROWER SERVICING MEETINGS

1. Special servicing or workout plan. Servicing or workout plans may include consideration of RHS approved marketing incentives, rent changes, Special Market Rent levels, and other actions set out in Exhibit B of RD Instruction 1965-B (available upon request).
2. Reamortization (see RD Instruction 1965-B). Reamortization actions are normally approved at the end of a successful servicing or workout plan in order to achieve long-term financial viability. Reamortization actions should not be approved solely to remove a delinquency.
3. Substitution of key owners, partners, or managers, changes in management agents, subordination, consent to incur additional non-trade debt, and other miscellaneous servicing actions set out in RD Instruction 1965-B.
4. Transfer to eligible applicant (see RD Instruction 1965-B).
  - a. Same terms.
  - b. New terms.
    - (1) Transfer full indebtedness.
    - (2) Transfer for less than the debt and process a subsequent debt settlement action.
5. Transfer to an ineligible applicant (see RD Instruction 1965-B).
6. Voluntary conveyance to the Government (see RD Instruction 1955-A).
7. Early payment of the loan (see RD Instruction 1965-B).
8. Payment application information or late fee waivers (see RD Instruction 1951-K).
9. Adverse servicing actions. Should it not be possible to mutually resolve issues of concern, the Agency may find it necessary to pursue one of the following servicing actions:
  - a. Issuance of a problem case report and a notice to owners of record of RHS's intent to accelerate if problems cannot be satisfactorily resolved within timely manner (see RD Instruction 1955-A).
  - b. When recovery efforts are warranted due to suspected unauthorized assistance which is not possible to be mutually resolved, issuance of a demand for recovery of unauthorized assistance (see RD Instruction 1951-N).
  - c. When serious failure to uphold responsibilities are evidenced, issuance of a suspension or debarment notice (see RD Instruction 1940-M).

Instructions: Please complete the following quarterly report using fiscal year quarters. Review the material collected earlier on the borrowers identified in number 1 below. Use information contained in file material, including the results of court ordered surveys, etc. in completing this action. Borrowers who are not in compliance should be scheduled for a servicing visit to confirm the degree of compliance. Forward the report to the State Director, who will consolidate the responses within 30 days of receipt and forward to the Deputy Administrator for Multi-Family Housing in the National Office.

Report Survey for \_\_\_\_\_ (enter jurisdiction).

Date of Report \_\_\_\_\_.

Name, title, and telephone contact of reporting personnel.

\_\_\_\_\_

1. \_\_\_\_\_ Number of borrowers as of the date of this report who had not executed a loan agreement prior to January 17, 1993, or who initially imposed no shelter cost charges for housing of residents.
2. \_\_\_\_\_ Number of borrowers in number 1 who, as of the date of this report, at one time evidenced non-compliance with Exhibit C of RD Instruction 1930-C
3. \_\_\_\_\_ Number of borrowers in number 2 who, as of the date of this report, were sent at least one written notice to come into compliance with Agency regulations.
4. \_\_\_\_\_ Number of borrowers in number 3 who were sent a notice to come into compliance with Agency regulations who, as of the date of this report, show that they came into compliance with Agency regulations (i.e., sent rebates or credits to tenants).
5. \$\_\_\_\_\_ Amount of cumulative rebates or credits delivered to residents since the initial imposition of these reporting requirements by \_\_\_\_\_ borrowers as of the date of this report.
6. \$\_\_\_\_\_ Amount of rebates or credits credited to the Rural Housing Insurance Fund since the initial imposition of these reporting requirements by \_\_\_\_\_ borrowers as of the date of this report.
7. \_\_\_\_\_ Number of borrowers in number 3 who are the subject of a servicing action by the Agency.